

REMARKS

Claims 11 to 30 are pending.

It is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

Applicants respectfully request the Office acknowledge acceptance of the drawings.

Claims 11, 13, 15, and 20 were rejected under 35 U.S.C. § 103(a) as unpatentable over Andres, U.S. Patent No. 6,236,922 in view of Mattes et al., U.S. Patent No. 5,014,810.

To reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Also, as clearly indicated by the Supreme Court in *KSR*, it is “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. *See KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007). In this regard, the Supreme Court further noted that “rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*, at 1396. Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Claim 11 includes the features of “using a forward displacement as the at least one signal” and “comparing the at least one signal to at least one threshold value surface, which is set as a function of a velocity decrease and a deceleration.” In this regard, the Office cites “Andres” at col. 3, lines 4 to 22, but this section merely states that:

[The] calculation of the first velocity begins when the **acceleration signal exceeds a threshold deceleration level**. This threshold deceleration level may be adjusted for various vehicle models as desired. The calculation of the second velocity begins, and the calculation of the first velocity *is concluded*, when two conditions are satisfied. The first condition is that the first **velocity** has reached a **threshold level**. The second condition is either that a significant **deceleration peak** has been reached in the filtered **acceleration signal**, or that an approximation has been made that the **displacement** of the occupant has reached a certain **displacement threshold**.

(“Andres” reference, col. 3, lines 4 to 22) (emphasis added).

Claim 11 clearly provides for a “comparing” between “a forward displacement” and a value “set as a function of a velocity decrease and a deceleration.” This is not disclosed or suggested by the “Andres” reference. In response to previous arguments, the Office conclusorily asserts that:

Claims 1 recites the following terms “a forward displacement, velocity and deceleration”. The claim fails to specify if the forward displacement correspond to a passenger displacement, vehicle displacement or any other object displacement. Also, the claim fails to specify th[at] if the terms velocity and deceleration correspond to the vehicle itself or any other object. In addition, Andres deploys airbag by detecting the velocity, deceleration and occupant displacement.

To clarify, the threshold value surface is defined *in the claim* to be “set as a function of a velocity decrease **and** a deceleration.” More specifically, the “Andres” reference does not disclose the claim feature of “comparing the [forward displacement] to at least one threshold value surface, which is set as a function of a velocity decrease and a deceleration”, as provided for in the context of the presently claimed subject matter. The Office has yet to provide a comparison in the “Andres” reference that discloses *each and every one of these features*.

In contrast, the cited text of the “Andres” reference refers to an acceleration measured against a threshold deceleration level. This comparison clearly does not disclose the above-discussed features of claim 11. First, velocity is not used at all in this comparison, but rather the comparison starts “a calculation of the first velocity.” Additionally, there is no displacement in any direction of any object used in this comparison. Thus, it could not

Application Serial No. 10/583,055
Attorney Docket No. 10191/4095
Reply to Office Action of May 26, 2009

possibly disclose the feature of “comparing the [forward displacement] to at least one threshold value surface, which is set as a function of a velocity decrease and a deceleration.”

The second comparison ends one velocity calculation and begins a second one “when two conditions are satisfied”, which is stated to be as follows:

The first condition is that the first velocity has reached a threshold level. The second condition is either that a significant deceleration peak has been reached in the filtered acceleration signal, or that an approximation has been made that the displacement of the occupant has reached a certain displacement threshold.

It can easily be seen that this does not disclose all that claim 11 requires, namely the features of “*comparing the [forward displacement] to at least one threshold value surface, which is set as a function of a velocity decrease and a deceleration.*” It is true that the “Andres” reference does not disclose a “threshold value surface, *which is set as a function of a velocity decrease and a deceleration*”, as provided for in the context of the presently claimed subject matter. The “Andres” reference does not disclose any “displacement threshold” that is “set as a function of a velocity decrease and a deceleration.”

In short, the “Andres” reference may refer to several measurements, but none of those measurements disclose or even suggest comparing a displacement (in any direction of any object) to a threshold “set as a function of a velocity decrease and a deceleration.”

Claim 12 was rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,236,922 (“Andres”) in view of U.S. Patent No. 5,014,810 (“Mattes”), in further view of U.S. Patent No. 6,459,366 (“Foo”), and in further view of U.S. Patent Application No. 2003/0197356 (“Fisher”).

Claims 16 to 19 were also rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,236,922 (“Andres”) in view of U.S. Patent No. 5,014,810 (“Mattes”), in further view of U.S. Patent No. 6,459,366 (“Foo”), and in further view of U.S. Patent Application No. 2003/0197356 (“Fisher”).

Claims 12 and 16 to 19 depend from claim 11, and are therefore allowable for essentially the same reasons, since the “Foo” and “Fisher” references do not cure – and are not asserted to cure -- the deficiencies of the “Andres” reference, as explained above as to claim 11.

Application Serial No. 10/583,055
Attorney Docket No. 10191/4095
Reply to Office Action of May 26, 2009

Claim 14 was rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,236,922 (“Andres”) in view of U.S. Patent No. 5,014,810 (“Mattes”), and in further view of U.S. Patent No. 6,549,836 (“Yeh”).

Claim 14 depends from claim 11, and is therefore allowable for essentially the same reasons, since the “Yeh” reference does not cure – and is not asserted to cure -- the deficiencies of the “Andres” reference, as explained above as to claim 11.

As conclusorily stated in the Office Action, claims 21 to 30 were conclusorily rejected for the same reasons as claims 12 to 20, without any other specific reasoning.

It is respectfully submitted that they depend from claim 11, and they are therefore allowable for the same reasons as claim 11, as explained above.

As further regards all of the obviousness rejections, any Official Notice is respectfully traversed to the extent that it is maintained and it is requested that the Examiner provide specific evidence to establish those assertions and/or contentions that may be supported by the Official Notices under 37 C.F.R. § 1.104(d)(2) or otherwise. In particular, it is respectfully requested that the Examiner provide an affidavit and/or that the Examiner provide published information concerning these assertions. This is because the § 103 rejections are apparently being based on assertions that draw on facts within the personal knowledge of the Examiner, since no support was provided for these otherwise conclusory and unsupported assertions. (See also MPEP § 2144.03).

Accordingly, claims 11 to 30 are allowable.

Application Serial No. 10/583,055
Attorney Docket No. 10191/4095
Reply to Office Action of May 26, 2009

CONCLUSION

In view of the foregoing, it is respectfully submitted that all pending claims 11 to 30 are in condition for allowance. It is therefore respectfully requested that the rejections and any objections be withdrawn. Since all issues raised by the Examiner have been addressed, an early and favorable action on the merits is respectfully requested.

Dated: 8/4/09

Respectfully submitted,

By:

Gerard A. Messina
(Reg. No. 35,952)

One Broadway
New York, NY 10004
(212) 425-7200

OO
Tulonc.
33/865
Aaron C
Seitch)

CUSTOMER NO. 26646

1645218